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MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			KOVACS, ARPAD F	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/772,811

Filing Date: February 05, 2004

Appellant(s): ALGREN ET AL.

Randall G. Rueth
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/17/2006 appealing from the Office action mailed 12/30/2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

RE 33,726 THORUD ET AL 10-1991
3085832 GUILLEMETTE 3-1962

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 9-14, 16-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Thorud et al (RE 33,726).

Thorud discloses:

cl. 1:

a drive housing (4) disposed on a body having a motor (engine 10) (fig 1);
a cavity disposed in the body (fig 1), having sides (walls 16) & at least partial semi-circular cross sectional shape (fig 1; col. 4, ln 58);
a paddle assembly having a shaft (38) & paddles disposed therefrom (32), that have a bottom wall (section 34) and a distal end (tip of ref impeller 30 as shown in fig 2 & 5) travels along the cavity, the bottom wall extends along an entire width of the paddle between side walls of the cavity & in a substantially planar manner (fig 2 & 5);
each paddle includes a pair of side walls (fig 5, ref. 36) with the bottom wall define an open region (fig 5);
a drive mechanism operatively connecting the motor and the shaft (fig 4);

cl. 2:

Art Unit: 3671

the bottom wall is arcuate extending outwardly from the shaft first away from and then toward the direction of the rotation (col. 5, ln 33-34);

cl. 3:

the region has a measurable volume (fig 5; col. 3, ln 13);

cl. 4:

the motor is electric (col. 4, ln 41, "other suitable power source" includes electric);

cl. 5:

a chute (80);

cl. 6:

the paddle, inherently, rotates between 350 rpm and 525 rpm;

cl. 7:

the body's choice of material is plastic (rubber, col. 7, ln 50-65, col. 8, ln 8);

cl. 9:

a drive housing (4) disposed on a body having a motor (engine 10) (fig 1);

a cavity disposed in the body (fig 1), having sides (walls 16) & at least partial semi-circular cross sectional shape (fig 1; col. 4, ln 58);

a paddle assembly having a shaft (38) & paddles disposed therefrom (32), that have a bottom wall (section 34) and a distal end (tip of ref impeller 30 as shown in fig 2 & 5) travels along the cavity, the bottom wall extends along an entire width of the paddle between side walls of the cavity & in a substantially planar manner (fig 2 & 5);

each paddle includes a pair of side walls (fig 5, ref. 36) with the bottom wall define an open region (fig 5);

a drive mechanism operatively connecting the motor and the shaft (fig 4);

the bottom wall is arcuate about an axis parallel to the shaft (col. 5, ln 33-34);

cl. 10:

the region has a measurable volume (fig 5; col. 3, ln 13);

cl. 11:

the motor is electric (col. 4, ln 41, "other suitable power source" includes electric);

cl. 12:

a chute (80);

Art Unit: 3671

cl. 13:

the paddle, inherently, rotates between 350 rpm and 525 rpm;

cl. 14:

the body's choice of material is plastic (rubber, col. 7, ln 50-65, col. 8, ln 8);

cl. 16, 17:

a drive housing (4) disposed on a body having a motor (engine 10) (fig 1);

a cavity disposed in the body (fig 1), having sides (walls 16) & at least partial semi-circular cross sectional shape (fig 1; col. 4, ln 58);

a paddle assembly having a shaft (38) & paddles disposed therefrom (32), that have a bottom wall (section 34) and a distal end (tip of ref impeller 30 as shown in fig 2 & 5) travels along the cavity, the bottom wall extends along an entire width of the paddle between side walls of the cavity & in a substantially planar manner (fig 2 & 5);

each paddle includes a pair of side walls (fig 5, ref. 36) with the bottom wall define an open region (fig 5);

a drive mechanism operatively connecting the motor and the shaft (fig 4);

the bottom wall is arcuate about an axis parallel to the shaft and extending outwardly from the shaft first away from and then toward the direction of the rotation (col. 5, ln 33-34);

Art Unit: 3671

a handle & at least one wheel (handle 8, wheel 6);

cl. 18:

the region has a measurable volume (fig 5; col. 3, ln 13);

cl. 19:

the motor is electric (col. 4, ln 41, "other suitable power source" includes electric);

cl. 20:

a chute (80);

cl. 21:

the paddle, inherently, rotates between 350 rpm and 525 rpm;

cl. 22:

the body's choice of material is plastic (rubber, col. 7, ln 50-65, col. 8, ln 8).

Claims 8, 15, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thorud et al (RE 33,726), in view of Guillemette (3085832).

Thorud does not disclose the particular matter being grain.

Guillemette discloses that it has been found that a snow thrower can be used for throwing or blowing other materials such as grain (col. 3, ln 36-40).

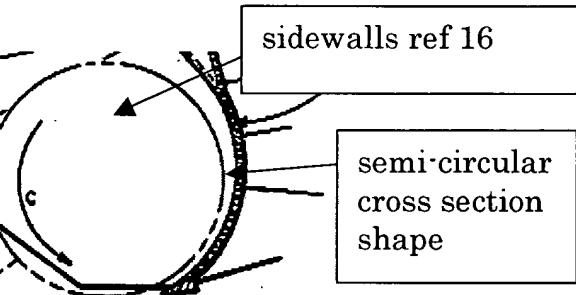
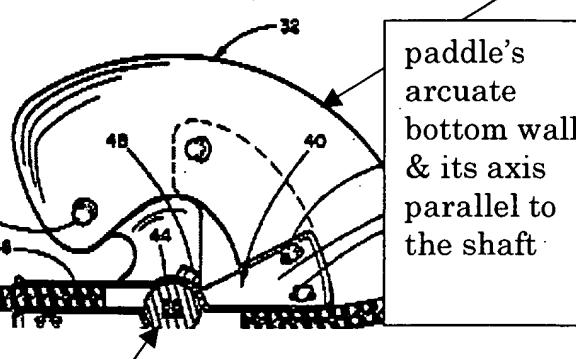
It would have been obvious to one having ordinary skill in the art at the time the invention was made to realize the application of the Thorud's device, as taught by Guillemette, to move grain and/or snow.

(10) Response to Argument

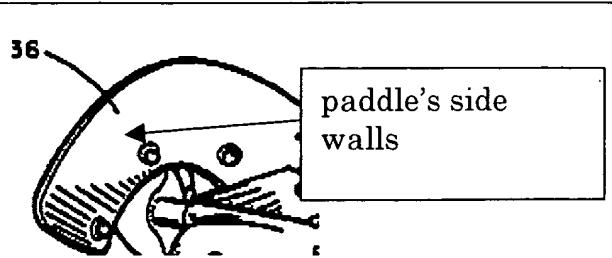
Appellant's argument against Thorud is based on a different interpretation of the prior art than the one examiner set forth in the rejection. For better understanding of these differences, examiner presents table & graphical illustrations and follows the claim presentation in the order Appellant chose. Appellant did not start with the broadest claim 1, instead started out with more narrow claims 9 and 16. Claims 9 and 16, among other things, recite "wherein the bottom wall is arcuate about an axis parallel to the shaft" following the amendment made on December 7, 2005.

Following chart/table shows how the Examiner interpreted the claim.

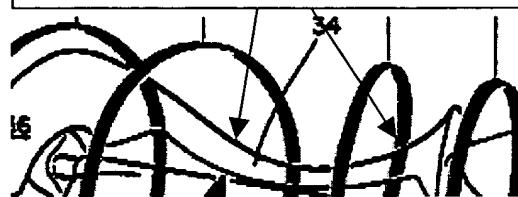
Interpretation of claim 9 and equally applicable to claim 16 (as Appellant stated):

Claim 9:	Thorud et al:
a body having a motor	fig 1, internal combustion engine/motor ref 10, col. 4, ln 40-41
a drive housing disposed on the body	housing ref 4
a cavity disposed in the body, the cavity having a first side, a second side, and at least a partial semi-circular cross-section shape	 <p>sidewalls ref 16</p> <p>semi-circular cross section shape</p> <p>cavity as shown in fig 1 & 2;</p>
a paddle assembly having a shaft and a plurality of paddles disposed therefrom, each paddle having an arcuate bottom wall extending outwardly from the shaft, wherein the bottom wall is arcuate about an axis parallel to the shaft, a pair of side walls, and a distal end, wherein the	 <p>32</p> <p>38</p> <p>40</p> <p>42</p> <p>44</p> <p>46</p> <p>paddle's arcuate bottom wall & its axis parallel to the shaft</p> <p>paddle's shaft</p>

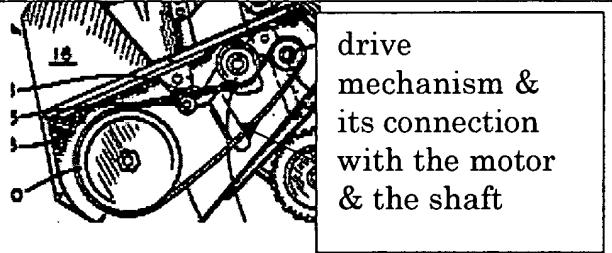
side walls and the arcuate bottom wall define an open region and the distal end travels along the semi-circular cross-section shape of the cavity during operation



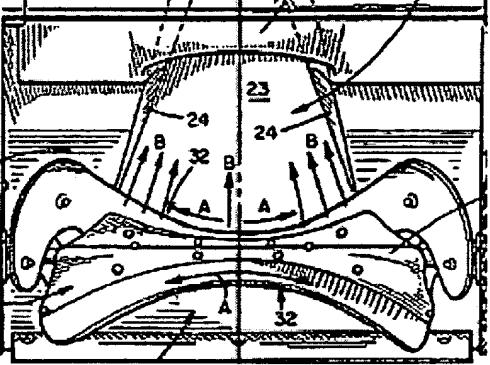
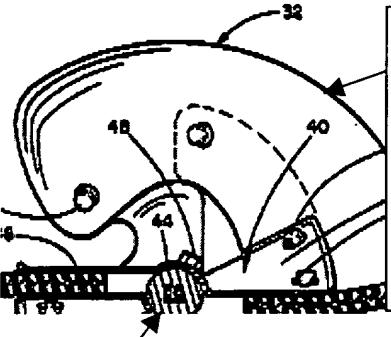
paddle's distal end that travels along the semi-circular cross section shape of the cavity

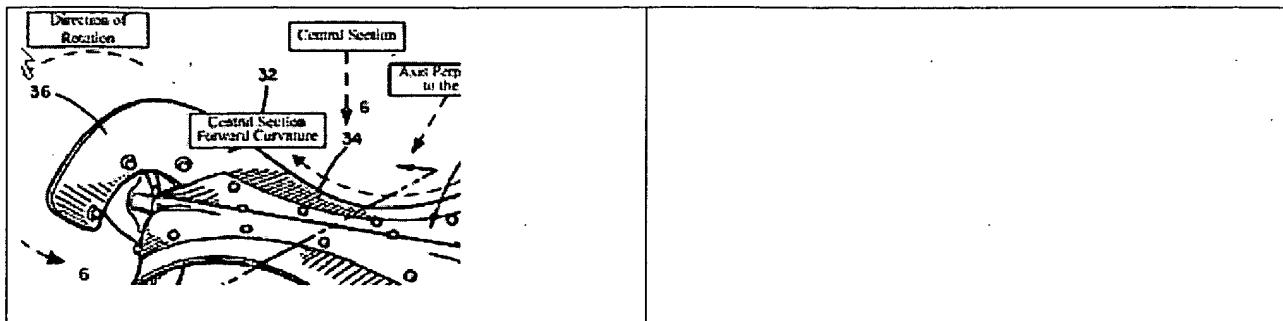


a drive mechanism disposed in the drive housing, the drive mechanism operatively connecting the motor and the shaft

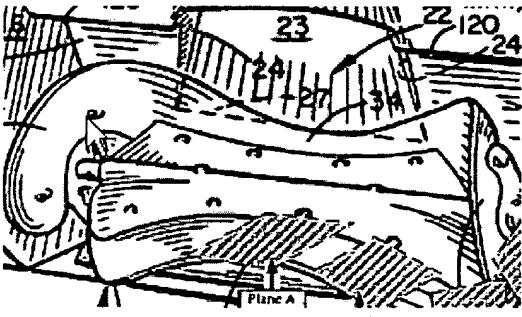
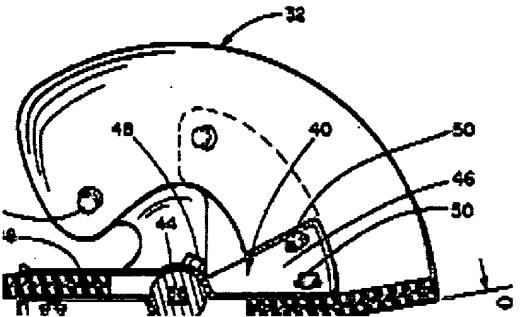


Following chart/table shows how the Appellant interpreted differently the prior art, as opposed to the Examiner.

Appellant's argument in re cl.9 & 16	Examiner's response in re cl. 9 & 16
<p>"nothing in Thorud discloses a paddle that is arcuate about an axis parallel to the shaft"</p> <p>Appellant points to arrows B (shown below) in support:</p>  <p>and argues a second (different) curvature of the bottom wall with an axis perpendicular to the shaft (shown below)</p>	 <p>NOTE: on page 8 last 2 lines & continuing on page 9, "in operation, throw particulate matter ..." is not recited in claims 9 and 16. Appellant's argument is misleading in this regard;</p> <p>Appellant discovered a different (second) curvature than the one examiner considered.</p> <p>paddle's arcuate bottom wall & its axis parallel to the shaft</p> <p>paddle's shaft</p>

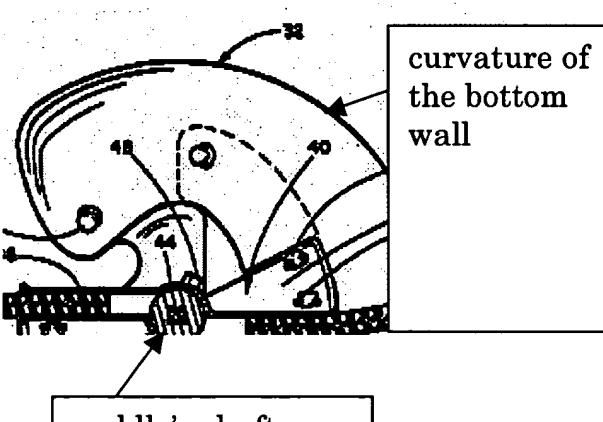


Following chart/table shows how the Appellant interpreted differently the prior art, as opposed to the Examiner.

Appellant's argument in re claim 1	Examiner's response in re claim 1
<p>“nothing in Thorud discloses a substantially planar paddle bottom wall that is substantially planar between side walls as claimed” as Appellant argued for extending in many different planes (A, B, C, D, shown below)</p> 	<p>The actual claim language is: “bottom wall extends along an entire width of the paddle in a substantially planar manner between the first side wall and the second side wall”</p> 

Appellant did not argue any specifics in re the dependent claims 3-8, 10-15, and 18-23. In view of the response above, these claims are admitted to be properly rejected over Thorud.

Following chart/table shows how the Appellant interpreted differently the prior art, as opposed to the Examiner.

Appellant's argument in re cl. 2 & 17	Examiner's response in re cl. 2 & 17
<p>“impeller bottom wall never extends outwardly from the shaft ‘first away from and then toward’ the direction of the rotation”</p>	<p>Appellant argued against Thorud citing a different interpretation of the curvature. Examiner interprets the curve as shown below:</p> 

Appellant's argument in re claims 8, 15, and 23:

Appellant argument set forth criteria that must be met to establish a *prima facie* case of obviousness. Further, Appellant argues that Guillemette does not disclose at least the paddles as claimed. However, it is misleading, since examiner outlined that Guillemette teaches that a snow blower can be utilized for different purposes, and did not argue that Guillemette teaches the paddles claimed. Therefore, as taught by Guillemette, one skilled in the art would know that a snow blower of Thorud can be used "for receiving and throwing grain to a desired location" (claim 18) or "particulate matter" can be "grain" (claim 15 & 23).

In summary, Appellant argument started with the narrower claims 9 & 16 and followed by the broadest claim 1. Appellant's interpretation based on a different interpretation of the prior art, than the one set forth by the examiner.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Árpád Fábián Kovács

Conferees:

Thomas B. Will 

Meredith C. Petrvick 